

REMARKS/ARGUMENTS

Claims 1, 3 to 5, 7 to 10, 12 to 14, 16, 19, 20, 23, 26 and 28 to 34 remain in this application. Claims 2, 6, 11, 15, 17, 18, 21, 22, 24, 25 and 27 have been cancelled, without prejudice, to presenting in a continuing application.

Claim 9 has been amended to require the floor covering to have a layer with an exposed major surface and the layer to comprise a composition having material capable of migration whereby the material capable of migration migrates to the exposed surface. Support for this amendment is found in paragraph [0015].

Claim 26 has been amended to require the material capable of migration to be capable of migration at room temperature. Support for these amendments is found in paragraphs [0015] and [0035] to [0037].

Claims 3 to 5, 14, 15 and 26 to 31 have been rejected as being anticipated by Kupits US Patent No. 3,129,194 (Kupits) in paragraph 5 on pages 2 and 3 of the Office Action mailed June 13, 2005 ("the latest Office Action). Claims 3 to 5, 14, 15 and 28 to 31 all depend directly or indirectly on claim 26. Claim 27 has been canceled. Amended claim 26 requires the material capable of migration to be capable of migration at room temperature. Kupits does not teach or suggest this limitation.

The invention of Kupits is adding a release additive to the composition of Kupits before the sheet material is fused into its final form so that some of the release additive is released in the hot platen as the sheet is being heated and consolidated, so that the sheet material does not stick to the hot platen. See column 2, line 48, to column 3, line 6.

After the sheet has been consolidated by the hot platen, it is fused into the final product and the remaining release additive is absorbed into the primary binder or resin.

There is no teaching or suggestion in Kupits that the amount of the release additive is in excess of its compatibility in the floor covering composition in the final floor covering product at room temperature.

In fact, the concentration of the release additive is reduced as it leaves the heated unfused sheet in the hot platen. The release additive is then absorbed into the primary binder and the sheet cooled to room temperature, which further deters migration. As stated at column 8, lines 48 to 54, of Kupits:

“It is important that the hot platen be maintained at a high enough temperature to effect flow and consolidation of the plastic composition but not sufficiently hot to effect complete fusion and solvation of the principal binder. If fusion should occur in the press, the release additive becomes absorbed in the composition and satisfactory release does not take place.”

The temperature in the hot platen must be high enough to effect flow of the release additive and after the primary binder is fused and the release additive absorbed, there is no satisfactory release of the release agent.

The conditions taught in Kupits are not the same as the limitations of claim 26. The concentration of the release additive in Kupits is sufficient to cause migration in the unfused and unsolvated primary binder of an intermediate sheet when at an elevated temperature, i.e. the release additive not absorbed in the primary binder and the temperature of the composition is sufficient to permit migration of the release additive. Claim 26 requires the concentration of the release additive to be sufficient to migrate in a finished (and therefore fused and solvated binder of the) floor covering at room temperature.

Since the conditions are not the same, Kupits does not anticipate claim 26. Further, since there is no teaching or suggestion of the release additive being capable of

migration in the finished floor covering of Kupits at room temperature, claim 26 is not obvious over Kupits. Therefore, claim 26 and the claims dependent thereon are allowable over Kupits.

Claims 1, 7, 8, 10 and 12 have been rejected as being obvious over Kupits in view of Eiden US Patent No. 4,336,293 (Eiden) in paragraph 7 on pages 4 and 5 of the latest Office Action. The Examiner states that "Kupits fails to disclose the floor covering having a profile with elevations and recesses." She looks to Eiden for a teaching

"that it is old and well-known in the art to have a polyvinyl chloride floor covering embossed to have a profile with elevations and recesses for the purpose of permitting drainage of liquids from the upper surface of the floor covering."

(Emphasis supplied.) She admits that

"Eiden fails to teach the average spacing between profile peak in the centerline being more than about 200 μm and less than about 1000 μm , and the difference in height between the elevations and the recesses being from about 20 μm to about 200 μm ."

Then she continues by arguing:

"However, Eiden teaches a floor covering with elevations and recesses wherein the difference in thickness between the raised and the depressed portion is at least 1 mm and the preferred wave frequency of the sine wave is 25 mm from peak center in adjacent waves (see col. 4, lines 51-55 and 60-62). Therefore, the optimum ranges for the average spacing between the peaks in the centerline and the difference in height between the elevations and the recesses would be readily determined through routine experimentation by one having ordinary skill in the art depending on the desired end results. Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the elevations and recesses of the floor coverings in Eiden to have an average spacing between profile peaks in the center centerline being more than about 200 μm and less than about 1000 μm , and have the difference in height between the elevations and the recesses being from about 20 μm to about 200 μm , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art in the absence of showing unexpected results. *MPEP 2144.o5 (II)*"

(Underlining supplied, italics in original.) Since the purpose of forming the elevations and recesses in Eiden (permitting drainage of liquids from the upper surface of the floor covering) is different than the purpose of the presently claimed elevations and recesses (to improve soiling behavior in combination with the substance capable of migration, optimizing the elevations and recesses of Eiden to improve drainage would not necessarily yield the presently claimed ranges of spacing and height.

In fact, since the preferred elevations and recesses of Eiden have a difference in thickness between the raised and the depressed portion of at least 1 mm and the preferred wave frequency of the sine wave of 25 mm from peak center in adjacent waves fall outside the ranges of present claim 1, optimizing the embossing of the Eiden floor covering to maximize drainage of liquids from the upper surface of the floor covering would fall outside the claimed ranges. Kupits' preferred range of at least 1 mm falls outside the claimed range of about 20 μm to about 200 μm (equal to about 0.02 mm to about 0.20 mm), and Kupits' preferred range of 25 mm falls outside of the claimed more than about 200 μm and less than about 1000 μm (equal to more than about 0.20 mm and less than about 1 mm).

If the Examiner disagrees and holds that optimizing the embossing of Eiden for the purpose taught by Eiden would fall outside the preferred ranges of Eiden and within the claimed ranges, this would teach away from the disclosure of Eiden and she is respectfully requested to explain where in the cited art there is a teaching or suggestion which is contrary to that of Eiden, or if the rejection is based on facts within the personal knowledge of the Examiner, support in the form of an affidavit is requested, in accordance with MPEP section 707.

Claim 9 has been rejected as being obvious over Kupits in view of Heiges US Patent No. 2,828,219 (Heiges) in paragraph 8 on pages 5 and 6 of the latest Office Action. The Examiner looks to Heiges for a teaching of using a plurality of wax-like substances, each having different melting points. However, she is incorrect in that Heiges does not teach using a plurality of wax-like substances for the purpose of producing a coating for a floor covering having good wear and soil resistance.

The purpose of Heiges' first layer 4, which includes the plurality of wax-like substances, is to "satisfactorily fill all of the imperfections appearing on the surface of the cork tile, and the other layer or layers are a low viscosity polyethylene type which renders the surface wear-resistant and soil-resistant." See column 1, lines 42 to 53.

As stated at column 2, lines 21 to 40, of Heiges:

"To this cork tile sheet [2] there is applied a dual coating of wax in which the first layer 4 applied directly to the surface of the cork particles 3 is a blend containing a major portion of hydrocarbon wax and a minor portion of a polyethylene polymer having a relatively high molecular weight, and the surface coating 5 is a polyethylene polymer having a relatively low molecular weight.

".... The system outlined above results in a cork tile having a relatively low viscosity first coat which fills all the imperfections and which has applied thereover a coat of a relatively hard polyethylene wax, forming a smooth wear- and soil-resistant surface on the product."

Heiges teaches that it is the polyethylene surface coat which has good wear and soil resistance and not the plurality of wax containing first layer which fills the imperfections in the surface of the cork substrate. Therefore, there is no suggestion to substitute the first intermediate layer of Heiges for the wear layer of Kupits. At most there is a suggestion to interpose the intermediate layer of Heiges between the wear layer and substrate of Kupits. In which case the wax does not migrate to the exposed surface

of the floor covering, as required by amended claim 9, and claim 9 is allowable over the combination of Kupits and Heiges.

Claims 16, 19 and 20 have been rejected as being obvious over Kupits in view of Eiden and in view of Hiragami et al. US Patent No. 4,501,783 (Hiragami) in paragraph 9 on pages 6 and 7 of the latest Office Action. Claims 16, 19 and 20 depend directly or indirectly on claim 1. Therefore, they are allowable for the reasons that claim 1 is allowable.

Claims 13, 23 and 32 to 34 have been rejected as being obvious over Kupits in view of Hiragami in paragraph 10 on pages 7 and 8 of the latest Office Action. Claims 13, 23 and 32 to 34 depend directly or indirectly on claim 26. Therefore, they are allowable for the reasons that claim 26 is allowable.

Kupits does not anticipate the present claims nor make them obvious either separately or in combination with Eiden or Heiges. Therefore, since all of the rejections have been met, Attorney for Applicants submits that the present claims are in a condition for allowance. Therefore, early consideration and allowance are respectfully requested.

Respectfully submitted,

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Date

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